

T-807

Union Calendar No. 292

102d Congress, 2d Session - - - - - House Report 102-499

MISPLACED TRUST: THE BUREAU OF INDIAN AFFAIRS' MISMANAGEMENT OF THE INDIAN TRUST FUND

SEVENTEENTH REPORT

BY THE

COMMITTEE ON GOVERNMENT
OPERATIONS



APRIL 22, 1992.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

54-438

WASHINGTON : 1992

54-438 - 92 - 1

HOLT
EXH. 1

Mr. RICHARDS. No question about that. The BIA is a tinder box simply waiting for a spark.³²

Despite decades of criticism about these manifest management deficiencies, the BIA has failed to take adequate measures to correct its shortcomings or to implement the advice of its own experts. For example, a 1984 Price Waterhouse report on trust fund operations recommended that the BIA: (1) Define responsibilities of trust fund financial management officials; (2) prepare an up-to-date policy and procedures manual for the central office and agency offices; (3) segregate the tasks of investment and management and security custody; (4) establish an on-going audit function; (5) implement a single trust accounting system; (6) implement an improved system for tracking expected income; (7) implement a deposit reporting service; (8) modify cash deposit procedures by establishing more local depositories; establishing fund concentration accounts in a major commercial bank; and, using a balance reporting service with a major commercial bank; and (9) consider a shift of BIA disbursement activities to a commercial bank.³³

That Price Waterhouse report, more than any other, gave upper level BIA management the basis for considering a financial services contract with a major commercial bank. Ironically, few of the Price Waterhouse recommendations have actually been implemented by the BIA. Instead of correcting its own management and accounting problems, BIA seized upon the Price Waterhouse recommendations—particularly establishing fund concentration accounts in a major commercial bank; using a balance reporting service with a major commercial bank; and, shifting BIA disbursement activities to a commercial bank—as justification for attempting to privatize financial management of the Indian trust funds. Between 1987 and 1989, the Bureau of Indian Affairs spent enormous amounts of time, energy, and taxpayer money attempting—inappropriately and unsuccessfully—to transfer the Indian trust fund financial management to the private sector.

The attraction of privatization among Bureau headquarters personnel was heightened by a report issued by Arthur Andersen in December 1985, summarizing responses from private industry (banks, investment and accounting firms) to a Bureau request for information [RFI].³⁴ When more than 100 responses came in from the RFI, it reinforced the Bureau managers' belief that there was significant private sector interest in the BIA trust fund program. Further, the Bureau's managers assumed that there were accounting and management systems—hardware and software—already available on the market to meet BIA's highly specialized needs. With respect to the Security Pacific National Bank contract, discussed in detail below, both of these assumptions were proven wrong.³⁵

These assumptions about the private sector supported the already strong belief by then-Assistant Secretary for Indian Affairs

³² May 20, 1991, hearing at 82.

³³ Price Waterhouse "In-Depth Review of the Indian Trust Funds for the Bureau of Indian Affairs, Task V Recommendations," Jan. 11, 1984, at 3.

³⁴ Federal Register notice, Apr. 15, 1987.

³⁵ Apr. 24, 1990, hearing at 13-15, Sept. 25, 1990, hearing at 62-63.

Ross Swimmer that privatization of financial management was the answer to most of the Bureau's longstanding trust fund problems. Swimmer's plan called for a commercial bank to take over the processing of cash receipts, through the use of lockbox services and to use an accounts receivable system³⁶ for trust income that would feed the lockboxes, and disbursements, investment and trust accounting for the trust fund. In September 1986, BIA awarded a contract for these services to Mellon Bank of Pittsburgh, PA.

Many tribes and beneficiaries objected to the Mellon Bank contract, because tribal representatives were not consulted in the development of the contract.³⁷ Moreover, the banking and investment community objected to the lack of open competition for the contract (only six banks with lockbox contracts already in place with the Treasury were even allowed to bid). Finally, serious legal questions were raised about the Bureau's authority to delegate inherently governmental functions such as collection, disbursement, and investment to a third party, and over certain privacy act requirements.³⁸ As a result of these questions and concerns, in April 1987, the Mellon Bank agreement was terminated.

Concerned that the Bureau's efforts to execute a financial services contract with a private commercial bank might result in the BIA merely passing off a set of unbalanced books to another party, Congress added a proviso to the fiscal year 1987 Supplemental Appropriations Act prohibiting the Bureau from transferring funds under contract to any private institution until Indian trust fund accounts were audited and reconciled. Subsequently, the fiscal year 1988 Interior and related agencies appropriations conference report included language that prohibited BIA from contracting out trust fund services until an accounting of the funds had been provided to the tribe(s) involved, the proposed contractual agreements had been submitted to and approved by the appropriations committees, and the Bureau had adequately consulted with the affected tribes.

Indeed, the 1987 Supplemental Appropriations Act conference report contained only the first of six successive congressional directives regarding the BIA's responsibility to audit and reconcile all Indian trust fund accounts:

... none of the funds in this Act shall be used by the Bureau of Indian Affairs to transfer funds under a contract with any third party for the management of tribal or individual Indian trust funds until the funds held in trust for such tribe or individual have been audited and reconciled, and the tribe or individual has been provided with an accounting of such funds, and the appropriate committees of Congress and the tribes have been consulted with as to the terms of the proposed contract or agreement.³⁹

³⁶ Under the original contract, the accounts receivable system was to be developed later by BIA.

³⁷ Oct. 26, 1989, hearing at 49 to 51.

³⁸ Statement of George Tallichief, principal chief of the Osage Tribe and president of the National Tribal Chairmen's Association, Oct. 26, 1989, hearing at 47-52; See also: additional information supplied for the record, Oct. 26, 1989, at 91-94.

³⁹ Public Law 100-202, Dec. 22, 1987. See also: Public Law 100-446, Sept. 27, 1988, House Report 100-862 (conference committee); Public Law 101-121, Oct. 23, 1989, House Report 101-121 (conference committee); Public Law 101-512, Nov. 5, 1990, House Report 101-789 (conference committee); Public Law 102-154, Nov. 13, 1991, House Report 102-256 (conference committee).

Based on the recent findings of Arthur Andersen, information contained in previous audit reports, and the expressed concerns of the Inter-Tribal Monitoring Association, the committee believes it reasonable to be concerned about the accuracy of BIA's ownership records.²² Today, BIA is spending a great deal of taxpayer money²³ and other resources administering and maintaining tens of thousands of minuscule ownership interests and maintaining thousands of IIM trust fund accounts with little or no activity, and with balances less than \$50.

B. BIA'S FAILED ATTEMPT TO PRIVATIZE THE INDIAN TRUST FUND

land. The act also provided that, under certain conditions, an individual Indian ownership of 2 percent or less in a tract would be transferred to the respective tribe upon an owner's death. Instead of being transferred to the decedent's heirs. This transfer of property to the tribe is referred to as "escheatment."

11- "Budget of the United States Government, Fiscal Year 1992," part IV at 769, estimated that over \$50 million would be spent on performance of trust fund responsibilities. According to the Department of the Interior's justification to support appropriations, fiscal year 1993, an additional 40 full employees are requested for the Office of Trust Management to "enhance management oversight, improve accounting and investment services and establish a cadre of audit and systems experts to work on identified long-range improvements to trust fund operations, systems and clientele services at a cost of \$2,260,000."

"Arthur Andersen & Co., "Bureau of Indian Affairs, Trust Funds Reconciliation Project Overview Presentation," Jan. 28, 1992, at 19, 23, and 26 (document available in subcommittee official).

²⁰Statement of Jeffrey C. Steinhoff, U.S. General Accounting Office, Director of Civil Audits, Accounting and Financial Management Division, May 20, 1991, hearing at 6.

and congressional reviews. At the top of the list of those problems has been not only trust fund accounting, but the complete absence of any kind of financial accounting by the Bureau of Indian Affairs.

After its 1987 retreat from the Mellon contract fiasco, BIA's goal appeared to be to get another privatization effort underway as soon as possible. Toward that end, a new request for proposals⁹⁷ was advertised on February 18, 1988. However, only two bids were received. BIA concluded that the Security Pacific had submitted the best offer and it was awarded the contract.⁹⁸

At the same time as BIA was evaluating these bids, it was completing an Office of Management and Budget A-76 cost comparison study.⁹⁹ In July 1988, Assistant Secretary for Indian Affairs Ross Swimmer wrote tribal leaders with the results of BIA's cost comparison study stating that BIA had demonstrated that the cost studies supported another effort to privatize the financial management of the Indian Trust Fund.¹⁰⁰ By September 18, 1988, BIA was claiming that its cost comparison studies showed that almost \$3 million could be saved over a 5-year period (about \$550,000 per year) by using a private contractor for services to strengthen internal management and administration of the Indian trust funds.¹⁰¹

As result of the RFP, on September 14, 1988, BIA signed a 1-year contract, with four yearly options, valued between \$15 million and \$22 million overall, for services to strengthen internal management and administration of the Indian trust fund. The contractor, Security Pacific National Bank of Los Angeles was responsible for providing financial services and its subcontractor, Computer Data Systems, Inc. [CDSI], of Rockville, MD, was responsible for providing accounting and computer services.

According to the provisions of the contract, Security Pacific was required to meet a series of timeliness standards and performance milestones marking its progress toward completion of its responsibilities to the Government. In all, five tasks were identified in the contract: Systems analysis (3 months after award); investment services; collection and disbursement services (5 months); accounting services fully operational (6 months); and, account conversion (6 months).¹⁰²

However, the accounting system that the Bureau contracted for was never delivered or developed.¹⁰³ In fact, Security Pacific's subcontractor, Computer Data Systems, could not even get its own computer system and software to operate properly during the acceptance testing phase of the contract, which was originally sched-

⁹⁷ Letter from then-Assistant Secretary of Indian Affairs, Ross Swimmer, to tribal chairmen, July 25, 1988, additional information supplied for the record by the Bureau of Indian Affairs, Oct. 26, 1989, hearing at 169 and 186.

⁹⁸ Statement of Robert Hunter, U.S. General Accounting Office, associate general counsel, Office of General Counsel, Oct. 26, 1989, hearing at 9, 10, 25, and 26.

⁹⁹ *Id.* at 24.

¹⁰⁰ Oct. 26, 1989, hearing at 186.

¹⁰¹ Oct. 26, 1989, hearing at 205-206.

¹⁰² Account conversion would have required the transfer of all tribal and IIM accounts to Security Pacific National Bank. Even though, as discussed fully above, such transfer was expressly prohibited by law unless and until all tribal and IIM accounts had been audited and reconciled and, at that time, BIA had no plans to audit or reconcile any accounts prior to transferring the assets to Security Pacific National Bank for account conversion.

¹⁰³ Numerous citations, see: Oct. 26, 1989, hearing at 417, Apr. 24, 1990, hearing at 13, Sept. 25, 1990, hearing at 62-63.

uled for the summer of 1989. In addition to failing to deliver the accounting system it was to develop for the Bureau, Security Pacific National Bank failed to deliver any product or service required by the contract. Pressed by the subcommittee to name the deliverables¹⁰⁴ supplied by Security Pacific or its subcontractor, Computer Data Systems, the Bureau admitted that none of the five original tasks only a plan for conversion of the trust funds accounts have been delivered.¹⁰⁵

Despite its manifest failure to obtain the benefit of its bargain with Security Pacific, the Bureau failed to even demand that the contractor perform.¹⁰⁶ Nevertheless, the Bureau continued to make progress payments to Security Pacific National Bank on invoices submitted monthly for undefined and unmeasured services.¹⁰⁷

The contract and contracting process failures had begun almost immediately. For example, during the contract evaluation process that preceded the award of the contract to Security Pacific, the bidders had been required to successfully perform an operational capabilities demonstration. The purpose of the demonstration was to provide bidders an opportunity to display the functionality, efficiency, and technical merit of the proposed system and services in meeting the mandatory requirements of the request for proposal. Security Pacific and the unsuccessful bidder were advised that, in addition to meeting the other mandatory requirements, the demonstration was intended to illustrate specific capabilities of the proposed software. The operational capabilities demonstration was not intended to serve as a basis for marketing presentations. Since only two bids were received, and one was considered inadequate, only Security Pacific National Bank performed the operational capabilities demonstration.

At the subcommittee's request, GAO performed an analysis of the operational capabilities demonstration performed by Security Pacific National Bank and its subcontractor, Computer Data Services. GAO asked two questions about the demonstration: First, what was the substance of the operational capabilities demonstration; and second, did the contractor's system clearly demonstrate the mandatory capabilities during the operational capabilities demonstration.¹⁰⁸ Results of GAO's analysis revealed that only 50 percent of the tasks identified for testing during the operational capabilities demonstration were performed; a third of the tasks did not demonstrate what they were designed to show; and no criteria for evaluation were specified for 11 of 76 tasks completed. GAO also discovered that 14 irregularities were observed during the oper-

¹⁰⁴ Apr. 24, 1990, hearing at 12, 13, and 23, see also: additional information supplied for the record at 26.

¹⁰⁵ Apr. 24, 1990, hearing at 23-24, 26. Account conversion would have required the transfer of all tribal and IIM accounts to Security Pacific National Bank. Even though, as discussed fully above, such transfer that was expressly prohibited by law unless and until all tribal and IIM accounts had been audited and reconciled and, at that time, BIA had no plans to audit or reconcile any accounts prior to transferring the assets to Security Pacific National Bank for account conversion.

¹⁰⁶ Oct. 26, 1989, hearing at 416-417, Apr. 24, 1990, hearing at 62-63.

¹⁰⁷ Apr. 24, 1990, hearing at 29.

¹⁰⁸ U.S. General Accounting Office, opinion letter, B-235644, Aug. 22, 1989. See also: Statement of Robert Hunter, U.S. General Accounting Office, associate general counsel, Oct. 26, 1989, hearing at 9; and U.S. General Accounting Office, "Policy and Procedures Manual for Guidance of Federal Agencies," title 2, appendix III requirements, chapter 4.

ational capabilities demonstration. Considering the results of this demonstration of software performance and development, it is not surprising that Security Pacific's subcontractor, Computer Data Systems, was unable to deliver a software package for accounting service for the trust fund.

During the first 6 months of the contract, September 14, 1988, through March 30, 1989, Security Pacific National Bank was to develop and implement an investment system. Even though no contracted deliverables were supplied, Security Pacific National Bank was paid \$330,000 for this segment of the contract. For reasons that BIA could not adequately explain under subcommittee questioning, no demand letter was sent to Security Pacific National Bank demanding performance during this first 6-month segment or at any other time.¹⁰⁹

During the next 6-month segment, April through October 1989, Security Pacific completed no tasks in fulfillment of the contract and provided no deliverables. During this time, the contract required Security Pacific to provide maintenance and operation of the implemented accounting system, account custodial services for the individual Indian money accounts and tribal accounts, and investment services for BIA. The original cost for this segment of the contract was \$300,000 for support services, \$298,596 for custodial services, \$720,000 for investment services, and \$190,800 for other accounts for a total of \$1,509,396.

According to the subcommittee's review, the total cost of the first year for both segments of the Security Pacific National Bank contract could have been \$1,839,396, had the Security Pacific National Bank contract been fully implemented. According to BIA testimony at the subcommittee's April 24, 1990, hearing, the Security Pacific contract could have cost the BIA more than \$3 million a year.¹¹⁰ BIA eventually paid Security Pacific \$934,512, but according to the Assistant Secretary for Indian Affairs, did not obtain any benefits for the Government.¹¹¹ While BIA continued to assert that some deliverables were received, the testimony and evidence suggests that little of value resulted from this million-dollar expenditure.¹¹²

Indeed, trying to pin down the BIA on matters pertaining to the Security Pacific National Bank contract was difficult for the subcommittee. Consider this exchange between the ranking minority member of the subcommittee and Mr. George Gover, then-Acting Director of the Office of Trust Fund Management, on April 24, 1990:

Mr. CLINGER. What deliverables were to be provided by Security Pacific National Bank under the original contract?

Mr. GOVER. The contract was to provide the collection, the accounting, investment and disbursement of trust funds. It was to provide a tribal and a trust fund management system, an integrated system for how we go about managing those funds.

¹⁰⁹ Oct. 26, 1989, hearing at 417, and Sept. 25, 1990, hearing at 63.

¹¹⁰ Apr. 24, 1990, hearing at 14.

¹¹¹ Apr. 24, 1990, hearing at 24-27.

¹¹² See for example: Oct. 26, 1989, hearing at 417, and Sept. 25, 1990, hearing at 63 and 69.

Mr. CLINGER. When was that work to have been completed under the original contract?

Mr. GOVER. Under the original contract, within the first 6 months.

Mr. CLINGER. Was any of that accomplished?

Mr. GOVER. No sir . . .

Mr. CLINGER. What was the cost for the original contract . . .

Mr. GOVER. The original cost—the original payment was \$330,000 for the first 6 months . . .

Mr. CLINGER. What did we get for that?

Mr. GOVER. The \$330,000 was for developmental cost paid to the contractor for the development of their base system.

Mr. CLINGER. But basically we really didn't get anything for that money, did we?

Mr. GOVER. Nothing tangible because this is a service contract. Under a service contract, you don't receive anything tangible. It is like—if I can use the expression, if you buy an airplane ticket from here to Los Angeles, you don't buy the plane, you just buy the ride.

Mr. CLINGER. I think we got taken for a ride, but I am not sure that we [got anything else.] [Laughter.]¹¹³

BIA's rationale for neglecting to demand full performance was that there was no need to send a letter because the requirements package for services to be performed under the contract were still being developed by BIA.¹¹⁴

BIA paid Security Pacific National Bank for the first 1-year period, even though few, if any, deliverables were provided; no investment system was implemented; the accounting services were not developed or in operation; no account custodial services were provided for the individual Indian money [IIM] accounts; and no support services were provided.¹¹⁵

From September 14, 1988, until April 1990, there were continual problems and delays in developing, testing, and implementing the computerized accounting system being developed by Computer Data Services.¹¹⁶ The plan was to run the new system in parallel with the existing BIA systems to compare the outputs. If the results of this operation were satisfactory, the system would be installed as the newly developed computerized accounting system. However, during the second day of acceptance testing of the automated accounting system, the subcontractor, Computer Data Services, requested that the acceptance test be terminated.¹¹⁷ Stated simply, Computer Data Services could not get its computer system

¹¹³ Apr. 24, 1990, hearing at 14-5.

¹¹⁴ Oct. 25, 1989, hearing at 431.

¹¹⁵ Sept. 25, 1990, hearing at 62.

¹¹⁶ Oct. 25, 1990, hearing at 420-432; Apr. 24, 1990, hearing at 13.

¹¹⁷ Oct. 25, 1989, hearing at 415-416.

to do what they said it could—to provide accounting services support.

As of April 24, 1990, Computer Data Services was unable to develop, test, and implement the computerized accounting services system for the Indian trust fund. Yet even at this late date, Security Pacific National Bank had not been put on notice for nonperformance. Instead, BIA suspended the Security Pacific National Bank contract shortly before the subcommittee's April 24, 1990, hearing:

Mr. SYNAR. During the last hearing, Dr. Brown, BIA witnesses indicated that no demand letters had been sent to the contractor for nonperformance because the Bureau was working closely with them to try to get the program up and running.

Isn't it true, Dr. Brown, that one reason we haven't sent any demand letters is because 18 months after the contract was awarded, the Bureau still . . . doesn't know what its final requirements are and that, in fact, the BIA was discussing provisions with Security Pacific as recently as late March [1990], just days before you put this whole contract on hold?

Mr. EDDIE BROWN. That is correct, sir.

Mr. SYNAR. So even if you didn't have the constraints imposed by the appropriations requirement [transferring funds to the contractor], Dr. Brown, in order to first audit and reconcile the accounts, you still wouldn't be ready to go, would you?

Mr. EDDIE BROWN. At this point in time, it is my opinion—no sir.

Mr. SYNAR. Isn't it true also, Dr. Brown, that if you hadn't put the contract on hold because of the auditing requirement, you would have probably had to make even further modifications to the contract?

Mr. EDDIE BROWN. Yes, sir.¹¹⁸

BIA finally terminated the Security Pacific contract on September 30, 1990. However, the Bureau was hesitant to admit that it has failed:

Mr. SYNAR. Did the Bureau get what it paid for in the \$934,512, Mr. Gover?

Mr. GOVER. According to the terms of the contract, yes.

Mr. SYNAR. Excuse me?

Mr. GOVER. According to the terms of the contract, we did get what we paid for?

Mr. SYNAR. Did the Security Pacific [National Bank] implement the collection?

Mr. GOVER. No, sir.

Mr. SYNAR. Accounting?

Mr. GOVER. No, sir.

Mr. SYNAR. Investment, and disbursement services for the trust fund, or the tribal, or trust fund management?

¹¹⁸ Apr. 24, 1990, hearing at 28.